

Susan S. Ford, OSB No. 842203
Thomas W. Stilley, OSB No. 883167
Joshua G. Flood, OSB No. 223085
SUSSMAN SHANK LLP
1000 SW Broadway, Suite 1400
Portland, OR 97205-3089
Telephone: (503) 227-1111
Facsimile: (503) 248-0130
E-Mail: sford@sussmanshank.com
tstilley@sussmanshank.com
jflood@sussmanshank.com

Attorneys for Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)	Case No. 23-32366-pcm11
)	
Local 8, International Longshoremen's and)	DEBTOR'S MOTION TO DISMISS
Warehousemen's Union,)	CHAPTER 11 CASE AND FOR RELATED
)	RELIEF
Debtor.)	
)	
)	
)	

MOTION

Debtor Local 8, International Longshoremen's and Warehousemen's Union ("Debtor" or "Local 8") through its counsel of record, hereby files this motion (the "Motion") to dismiss this Chapter 11 Case pursuant to Sections 305(a) and 1112(b) of Title 11 of the United States Code (the "Bankruptcy Code"). In support of this Motion, Local 8 respectfully states as follows:

JURISDICTION & VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are Sections 305(a) and 1112(b) of the Bankruptcy Code.

1 **BACKGROUND**

2 Local 8 has resolved its decade-long litigation with ICTSI Oregon, Inc. (“ICTSI”) on the
3 terms set forth in a Mutual Release Agreement (the “Settlement Agreement”).¹ As a result of the
4 settlement, assuming it is approved by the Court, the Debtor no longer requires the protections
5 provided by the Bankruptcy Code, and respectfully submits that dismissal is appropriate and in the
6 best interests of the Local 8, the bankruptcy estate, and Local 8’s creditors.

7 As a result of the Settlement Agreement, neither the Debtor nor its creditors stand to benefit
8 from pursuing proceedings regarding confirmation of the Debtor’s Plan of Reorganization for a
9 Small Business Under Chapter 11 Dated 1/16/2024 [ECF No. 77] (the “Plan”), currently set for
10 hearing on May 15, 2024 at 9:30 a.m. [ECF No. 80]. ICTSI, the creditor entitled to receive the
11 majority of payments under the proposed Plan, has agreed to the Motion to Approve Settlement
12 based upon the consideration provided in the Mutual Release Agreement between the parties. The
13 remaining creditors will be paid outside of the bankruptcy. As such, requiring the Debtor to
14 continue the Plan approval process will not provide any benefit to creditors and will result in
15 increased professional fees in connection with confirmation of the Plan. There are no adversary
16 proceedings in this Chapter 11 Case, either pending or contemplated, that would be adversely
17 impacted by a dismissal.

18 The Debtor proposes that the Court retain jurisdiction notwithstanding the proposed
19 dismissal of the case for the purpose of considering all fee applications filed by the Debtor’s
20 professionals and the Subchapter V Trustee in this case.

21 Dismissal is an efficient resolution of this Chapter 11 Case. It will provide a quick and
22 cost-effective exit and prevent further diminution of estate assets. If the Chapter 11 case remains
23 pending, the Debtor will continue to incur additional administrative expenses for no meaningful
24 purpose.

25
26 ¹ The Settlement Agreement is subject to the Court’s approval. Local 8 has filed a motion to
approve the Settlement Agreement concurrently with this Motion.

1 As the Court is aware, this bankruptcy stemmed from the ICTSI Litigation.² The ICTSI
2 Litigation commenced in June 2012 when the ILWU and Pacific Maritime Association filed a
3 complaint against ICTSI alleging that ICTSI was not in compliance with the collective bargaining
4 agreement covering ILWU longshore workers on the West Coast. ICTSI thereafter asserted
5 counterclaims against ILWU and Local 8 seeking damages for alleged unlawful labor practices. In
6 November 2019, a jury trial verdict was reached against the Debtor and ILWU for \$93,635,000.

7 On March 5, 2020, the Oregon Court found the maximum damages supported by the weight
8 of the evidence admitted by the Oregon Court during the two-week trial was \$19,061,248, and
9 ordered ICTSI to decide by March 19, 2020, whether it would accept that reduced amount of
10 damages, or retry the amount of damages. After ICTSI rejected the reduced damages amount, a
11 new trial on damages was scheduled to begin late February 2024, but has since been stayed by the
12 commencement of the Chapter 11 cases of the Debtor and ILWU. The Parties were facing a new
13 trial on damages at the time of the filing of this bankruptcy on October 18, 2023 (the "Petition
14 Date").

15 Since the Petition Date, Debtor has remained in possession of its property and continued
16 to operate and manage itself as a debtor in possession pursuant to Section 1184 of the Bankruptcy
17 Code.

18 As set forth in the Plan's liquidation analysis, the value of the Debtor's assets is
19 approximately \$300,000.³ Other than its cash on hand, the Debtor is not aware of any other
20 material estate assets. As such, the Debtor does not expect that the value of its estate will materially
21 increase by any method.

22 Three proofs of claim have been filed against the estate. Other than the ICTSI Proof of
23

24 ² Proceeding in the United States District Court for the District of Oregon under the caption *ICTSI*
Oregon, Inc. v. International Longshore and Warehouse Union, Case No. 3:12-cv-1058-SI.

25 ³ Debtor understands that ICTSI supports approval of the Motion, but disagrees with several of the
26 facts, statements, and conclusions contained herein. Rather than describing those disagreements,
the Parties have agreed that, if the Settlement Agreement is not approved and the Parties must
return to litigation, nothing stated by the Debtor in this Motion shall prejudice ICTSI in any way.

1 Claim which is being resolved by the Settlement Agreement (subject to Court approval), the rights
2 of all creditors of the Local 8 will be reinstated on dismissal of this case. ICTSI's Proof of Claim
3 No. 3 filed on December 21, 2023 in the amount of \$209,172,004 is based on an unliquidated
4 damages claim and pre-judgment interest related to claims asserted in the ICTSI Litigation which
5 are being resolved in connection with the Settlement Agreement.

6 LEGAL ARGUMENT

7 I. The Court May Dismiss The Bankruptcy Case Without Cause

8 Section 305(a)(1) of the Bankruptcy Code provides that "[t]he court, after notice and a
9 hearing, may dismiss a case under this title . . . at any time if – (1) the interests of creditors and the
10 debtor would be better served by such dismissal." 11 U.S.C. § 305(a)(1). No "cause" is required
11 for the dismissal of a case under Section 305(a) of the Bankruptcy Code. One must only show that
12 both creditors and the debtor will benefit from and be better served by a dismissal. *See Eastman v.*
13 *Eastman (In re Eastman)*, 188 B.R. 621, 624–26 (B.A.P. 9th Cir. 1995). As described below,
14 dismissal is clearly in the best interest of the Debtor and its creditors in this Chapter 11 Case.

15 II. Alternatively, the Court May Dismiss the Bankruptcy Case for Cause

16 Section 1112(b) of the Bankruptcy Code allows a court to dismiss a case for cause. This
17 section provides in relevant part that:

18 [T]he court shall convert a case under this chapter to a case under chapter 7
19 or dismiss a case under this chapter, whichever is in the best interests of
20 creditors and the estate, for cause unless the court determines that the
21 appointment under section 1104(a) of a trustee or an examiner is in the best
22 interests of creditors and the estate.

23 11 U.S.C. § 1112(b)(1).

24 Bankruptcy courts have broad discretion to determine whether cause exists, and once it is
25 found, the court must then dismiss the case, convert the case to Chapter 7, or appoint a trustee or
26 examiner. *See, e.g., In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008); *In re YBA*
Nineteen, LLC, 505 B.R. 289, 302 (S.D. Cal. 2014); *In re Bronson*, No. AZ-12-1320, 2013 WL
2350791 4652, at *22–23 (B.A.P. 9th Cir. May 29, 2013).

1 Section 1112(b)(4) of the Bankruptcy Code sets forth a list of examples of “cause;”
2 however, this list is not exhaustive, and “the court will be able to consider other factors as they
3 arise, and to use its equitable powers to reach an appropriate result in individual cases.” *In re*
4 *Consol. Pioneer Mortg. Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-
5 595, 95th Cong., 1st Sess. 405-06 (1977)), *aff’d*, 264 F.3d 803 (9th Cir. 2001). Courts have found
6 cause to exist for dismissal when the primary purpose of the bankruptcy case has been achieved.
7 *See, e.g., In re MELP, Ltd.*, 143 B.R. 890, 893 (Bankr. E.D. Mo. 1992) (“In this case, MELP came
8 into bankruptcy court seeking the protection of the automatic stay to enable it to reorder its affairs
9 and make peace with its creditors. This purpose has been successfully achieved.”), *rev’d on other*
10 *grounds*, 179 B.R. 636 (E.D. Mo. 1995).

11 Here, the primary purpose of the Local 8 bankruptcy has been achieved. From the
12 beginning of this Chapter 11 Case, the Debtor announced its intent to address the litigation with
13 ICTSI and the associated liability. If the Settlement Agreement is approved, the ICTSI claims will
14 have been resolved, the Debtor’s potential liabilities to ICTSI will have been released, and the
15 Debtor will have no causes of action to prosecute. Accordingly, the Debtor has nothing to gain by
16 remaining in Chapter 11 any longer.

17 Moreover, any avenue other than dismissal would involve a significant drain of financial
18 resources that would harm the Debtor and offer its creditors no benefit. Requiring the Debtor to
19 continue to prosecute the Plan, with the attendant administrative tasks that would be associated
20 with seeking approval of the Plan, will only generate unnecessary expenses to the detriment of the
21 Debtor’s estate. If the Chapter 11 Case is dismissed, the rights of creditors will be reinstated
22 without waiting for confirmation of the Plan.

23 Courts have recognized that dismissals, and in particular structured dismissals, are
24 appropriate and in the best interests of creditors in similar circumstances. *See, e.g., In re Buffet*
25 *Partners, L.P.*, No. 14-30699, 2014 WL 3735804, at *7-8 (Bankr. N.D. Tex. July 28, 2014)
26 (approving a dismissal where other options of conversion or plan confirmation “would add

1 significant and unnecessary time and expense,” noting that “there is not much in the way of assets
2 left to be administered” and that the “the economic value of the Debtor in this case will be served
3 by dismissing the case, rather than converting it”); *In re Old PXPRT, Inc., f/k/a PopExpert, Inc.*,
4 No. 16-30390-HLB (Bankr. N.D. Cal., Order entered Dec. 13, 2016) (Blumenstiel, J.) (dismissing
5 case following approval of settlement); *In re Donald Chidi Amamgbo*, No. 22-41051-CN (Bankr.
6 N.D. Cal. Order entered May 12, 2023) (dismissal of a subchapter V case following approval of
7 settlement); *In re William M. Lansdale*, 8:09-bk-22982-ES (Bankr. C.D. Cal., Order entered
8 Mar. 4, 2010) (Smith, J.) (dismissing the case following settlement). Local 8 respectfully requests
9 that this Court follow suit and enter the proposed form of order dismissing the Chapter 11 Case
10 following approval of the Settlement Agreement, so that the economic value of the Debtor’s estate
11 can be preserved for the benefit of creditors to the maximum extent possible.

12 CONCLUSION

13 WHEREFORE, Local 8 respectfully requests that this Court enter an order, substantially
14 in the form attached hereto as Exhibit A, (a) affirming the adequacy of the notice given herein;
15 (b) granting the Motion; (c) dismissing the Chapter 11 Case; and (d) any further relief that this
16 Court deems necessary or appropriate.

17 Dated this 13th day of March, 2024.

18 SUSSMAN SHANK LLP

19 /s/ Susan S. Ford

20 By _____
Susan S. Ford, OSB No. 842203
21 Attorneys for Debtor

22 26933-001 (04438934)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)	Case No. 23-32366-pcm11
)	
Local 8, International Longshoremen's and)	ORDER GRANTING MOTION TO
Warehousemen's Union,)	DISMISS CHAPTER 11 CASE AND FOR
)	RELATED RELIEF
Debtor.)	
)	
)	
)	

This matter having come before the Court pursuant to the Debtor's Motion to Dismiss Chapter 11 Case and for Related Relief [Docket No. ____] (the "Motion"),¹ and the Court having reviewed the Motion and the Court's files herein; and the Court having jurisdiction and authority over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157; and the Court finding that notice of the Motion and the hearing thereon were good and proper under the circumstances; and the Court finding good cause exists to grant the relief requested in the Motion. Now, therefore, it is hereby

ORDERED:

1. The Motion is GRANTED;

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. Pursuant to Sections 305(a) and 1112(b) of the Bankruptcy Code, this bankruptcy case is dismissed;

3. All objections to the Motion or the requested relief therein, if any, that have not been waived, withdrawn, or settled, and all reservations of rights included therein, are overruled;

4. Notwithstanding the dismissal of this case, the Court shall retain jurisdiction for the purpose of ruling on any fee applications filed by Debtor's professionals and the Subchapter V Trustee, which shall be filed on or before thirty calendar days after the entry of this Order; and

5. The Court shall also retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

###

CERTIFICATION OF COMPLIANCE WITH LBR 9021-1(a)(2)(A)

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

PRESENTED BY:

SUSSMAN SHANK LLP

/s/ Susan S. Ford

By _____
Susan S. Ford, OSB No. 842203
Attorneys for Debtor

26933-002 (04438940)

1 CERTIFICATE OF SERVICE

2 I, Janine E. Hume declare as follows:

3 I am employed in the County of Multnomah, state of Oregon; I am over the age of eighteen
4 years and am not a party to this action; my business address is 1000 SW Broadway, Suite 1400,
5 Portland, Oregon 97205-3089, in said county and state.

6 I certify that on March 15, 2024, I served, **via first class mail**, a full and correct copy of
7 the foregoing **DEBTOR'S MOTION TO DISMISS CHAPTER 11 CASE AND FOR**
8 **RELATED RELIEF**, to the parties of record, addressed as follows and on the parties on the
9 attached matrix:

10 Barnard Iglitzin & Lavitt LLP
11 18 West Mercer Street, Suite 400
Seattle, WA 98119

12 Ori Katz
13 Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109

14 James G Murphy
15 3803 136th St. N.E.
Marysville, WA 98271

16 Jennifer Nassiri
17 1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6055

18 Peterson & Associates PS
19 14201 NE 20th Ave. Suite B-101
Vancouver, WA 98686

20 I also certify that on March 15, 2024, I served the above-referenced document(s) on all
21 ECF participants as indicated on the Court's Cm/ECF system.

22 I swear under penalty of perjury that the foregoing is true and correct to the best of my
23 knowledge, information, and belief.

24 Dated: March 15, 2024.

25 */s/ Janine E. Hume*

26 Janine E. Hume, Legal Assistant

Label Matrix for local noticing
0979-3
Case 23-32366-pcm11
District of Oregon
Portland
Fri Mar 15 10:43:40 PDT 2024

AT&T
PO Box 6463
Carol Stream, IL 60197-6463

Arrow Sanitary Service
PO Box 7428
Pasadena, CA 91109-7428

Barnard Iglitzin & Lavitt LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119-3971

(p)CITY OF PORTLAND
OFFICE OF CITY ATTORNEY
RM 430
1221 SW 4TH AVE
PORTLAND OR 97204-1991

Coast Longshore Division
1188 Franklin Street
San Francisco, CA 94109-6800

Comcast Cable
PO Box 34744
Seattle, WA 98124-1744

First Choice Coffee Service
313 SE Yamhill
Portland, OR 97214-2199

GoToMyPC
851 W Cypress Creek Rd
Fort Lauderdale, FL 33309-2009

ICTSI Oregon, Inc.
1211 SW 5th Ave, Suite 1900
Portland, OR 97204-3719

ABC Fire Extinguisher Inc.
4848 NE 102nd Avenue
Portland, OR 97220-3340

American Bankers Insurance
Company - Flood Insurance
PO Box 731178
Dallas, TX 75373-1178

Arrow Sanitary Service
PO Box 74280
Pasadena, CA 91109-7428

Basic Fire Protection Inc.
8135 NE MLK Blvd.
Portland, OR 97211-1339

City of Portland
Police Alarm
PO Box 5599
Portland, OR 97228-5599

Columbia River Pensioners
Memorial Assoc
2435 NW Front Avenue
Portland, OR 97209-1825

JOSHUA GALLAGHER FLOOD
Sussman Shank LLP
1000 SW Broadway
Suite 1400
Portland, OR 97205-3089

AMANDA T GAMBLIN
Amanda T Gamblin, Attorney at Law
4004 SE Francis St
Portland, OR 97202-3104

I.L.W.U.
1188 Franklin Street
San Francisco, CA 94109-6800

IRS
PO Box 7346
Philadelphia PA 19101-7346

ALSCO
PO Box 17337
Portland, OR 97217-0337

American Bankers Insurance
Company
PO Box 731178
Dallas, TX 75373-1178

Ash Grove Cement Company
Attn: Plant Manager
13939 N Rivergate Blvd
Portland, OR 97203-6608

Centric Elevator Corporation
2855 SE 9th Avenue
Portland, OR 97202-2508

Clark County, Washington
Attn: Human Resources
PO Box 5000
Vancouver, WA 98666-5000

Comcast Business
PO Box 376091
Philadelphia, PA 19101-0601

SUSAN S FORD
1000 SW Broadway #1400
Portland, OR 97205-3066

MICHAEL T GARONE
Schwabe, Williamson & Wyatt
1211 SW Fifth Avenue
Suite 1900
Portland, OR 97204-3719

I.L.W.U.
1188 Franklin Street 4th Floor
San Francisco, CA 94109-6800

International Raw Materials, L
600 Chestnut St Ste 800
Philadelphia, PA 19106-3413

Intuit
PO Box 34328
Seattle, WA 98124-1328

Johnson Controls Security
System
PO Box 371967
Pittsburg, PA 15250-7967

Johnson Controls Security
System
PO Box 371967
Pittsburgh, PA 15250-7967

ORI KATZ
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109

DANIEL KUBITZ
Schwabe, Williamson & Wyatt PC
1211 SW 5th Ave
Ste #1900
Portland, OR 97204-3719

Lifeready 360
3597 E Monarch
Sky Ln #200
Meridian, ID 83646-1055

Local 11 Health Funds
PO Box 515199
Los Angeles, CA 90051-5199

Local 8, International Longshoremen's a
2435 NW Front Ave
Portland, OR 97209-1825

MC Landscaping LLC
12065 SW Gault
Beaverton, OR 97008-7936

Michael Garone
Schwabe, Williamson & Wyatt PC
1211 SW 5th Ave.
Portland, OR 97204-3795

Michael T. Garone
Schwabe Williamson & Wyatt, PC
1211 SW 5th Avenue
Portland, OR 97204-3795

Amy E Mitchell
POB 2289
Lake Oswego, OR 97035-0074

James G Murphy
3803 136th St. N.E.
Marysville, WA 98271-7816

N.W. Natural Gas
250 SW Taylor St.
Portland, OR 97204-3038

JENNIFER NASSIRI
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6055

Norhtwest Industrial Business
Association
1125 Madison Suite 112
Portland, OR 97214-3600

OPEIU Local 11
3815 Columbia Street
Vancouver, WA 98660-1967

Oregon Area District Council
2435 NW Front Avenue
Portland, OR 97209-1825

Oregon Department of Revenue
Box 14800
Salem, OR 97309-0920

Oregon Mutual Group
PO Box 3900
Portland, OR 97208-3900

Pacific Maritime Association
EE Welfare
PO Box 45322
San Francisco, CA 94145-0322

Pacific Maritime Association
Pay Directs
PO Box 740849
Los Angeles, CA 90074-0849

Pavelcomm
1640 NW 14th Avenue
Portland, OR 97209-2502

Pavelcomm, Inc.
1640 N.W. 14th Ave
Portland, OR 97209-2502

Peterson & Associates PS
14201 NE 20th Ave. Suite B-101
Vancouver, WA 98686-6412

Peterson & Associates PS
7917 NE Hazel Dell Ave
Vancouver, WA 98665-8226

Portand Joint Labor Relations
Committee
555 Market Street, 3rd Floor
San Francisco, CA 94105-5801

Portland General Electric
7895 SW Mohawk St
Tualatin OR 97062-9192

Portland General Electric
PO Box 4438
Portland, OR 97208-4438

Portland Police Alarm Administration
PO Box 1867
Portland, OR 97207-1867

LAWRENCE R REAM
Schwabe, Williamson & Wyatt P.C.
1420 Fifth Avenue
Ste 3400
Seattle, WA 98101-2339

Republic Services #472
PO Box 78829
Phoenix, AZ 85062-8829

SAIF Corporation
400 High St
Salem, OR 97312-1000

SAIF Corporation
400 High Street ST
Salem, OR 97312-1000

THOMAS W STILLEY
1000 SW BROADWAY #1400
PORTLAND, OR 97205-3066

Servicemaster
PO Box 1213
Clackamas, OR 97015-1213

Sierra Springs
PO Box 660579
Dallas, TX 75266-0579

Sprague
PO Box 2222
Tacoma, WA 98401-2222

Stat Pads LLC
13897 W. Wainwright
Boise, ID 83713-5011

Superior Underwriters
2002 156TH AVENUE NE, #201
Bellevue, WA 98007-3828

CHRISTIAN A. TORIMINO
DOJ-Ust
1220 SW 3rd Ave.
Room 315
Portland, OR 97204-2829

Tax Collector
Multnomah County
PO Box 2716
Portland, OR 97208-2716

Trotter & Morton Facility
29755 SW Boones Ferry Road
Wilsonville, OR 97070-7202

Trotter & Morton Facility
Service
29755 SW Boons Ferry Road
Wilsonville, OR 97070-7202

US Bank Equipment Finance
PO Box 790448
Saint Louis, MO 63179-0448

US Trustee, Portland
1220 SW 3rd Ave., Rm. 315
Portland, OR 97204-2829

Unions-America
PO Box 100
Battleground, WA 98604-0100

Unions-America.com
PO Box 3101
Clackamas, OR 97015-3101

United States Treasury
PO Box 932100
Louisville, KY 40293-2100

Western States OPEIU
Pension Fund, PMB #116
5331 S. Macadam Avenue, Ste 258
Portland, OR 97239-3871

Western States OPEIU Pension
Fund
Unit 10, PO Box 4800
Portland, OR 97208-4800

Western States OPEIU Pension
c/o BeneSys, Inc. PMB116
5331 SW Macadam Ave. Ste. 258
Portland, OR 97239-3871

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

City of Portland
PO Box 4216
Portland, OR 97208

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)ICTSI Oregon, Inc.

End of Label Matrix	
Mailable recipients	81
Bypassed recipients	1
Total	82